PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 4, 2003

Agenda ID# 2675
Alternate to Agenda ID# 2160

TO: PARTIES OF RECORD IN INVESTIGATION 97-07-018.

Enclosed is the Proposed Alternate Draft Decision of Commissioners Brown and Wood to the Proposed Decision of Administrative Law Judge (ALJ) Ryerson.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served September 11, 2003. No reply comments will be accepted.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioners, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin
Chief Administrative Law Judge

AKM:vfw

Attachment

Decision **ALTERNATE PROPOSED JOINT DECISION OF COMMISSIONERS WOOD AND BROWN (MAILED 9/4/03)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, rates and charges of the Hillview Water Company, Inc., a corporation, and Roger L. Forrester, the principal shareholder and president, Respondents.	Investigation 97-07-018 (Filed July 16, 1997)

Carol A. Dumond, Attorney at Law, and Mohsen Kazamzadeh, for the Commission's Water Division.
Douglas W. Stern and Leslie Ravestein, Attorneys at Law, and Roger L. Forrester, for Hillview Water Company, Inc., and Roger L. Forrester, respondents.

FINAL OPINION

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FINAL OPINION

Summary

This decision resolves all of the outstanding issues, except for the reconciliation of accounts that relate to the above-captioned Order Instituting Investigation (OII). The issues in this OII relate to the respondents' alleged violation of statutes, rules and tariffs administered by the Commission.[1] We determine that the respondents, Hillview Water Company, Inc. (Hillview or the company) and Roger L. Forrester (Forrester) violated Sections 491 and 825 of the California Public Utilities Code,[2] and Tariff Rule 15. We order the respondents to reconcile all of its accounts for the period from January 1, 1991 to and including June 30, 2003 and to submit an account reconciliation report to the Commission in a general rate case application, which shall be filed within nine months from the effective date of this decision. We also order the respondents to issue refunds of the supply and storage fees it unlawfully collected to Hillview customers upon receipt of written refund claims from those customers in accordance with the terms of Tariff Rule 15. We order the respondents to prepare and include a comprehensive report on the refunds in the general rate case application. We also order the respondents to notify the customers regarding the refunds in a local newspaper within 30 days from the effective date of this decision and again after three months from the publication of the first notice. Lastly, we impose a

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[1] Ancillary issues concerning rates and service that were at one time incorporated in this proceeding under Ordering Paragraph (OP) 7 of the OII were separately addressed in interim decisions issued earlier in this proceeding.

[2] All statutory references in this decision are to the Public Utilities Code, unless otherwise noted.

fine of $1000 on the respondents for violating various Commission's statutes and tariffs. The $1000 fine shall be remitted to the Commission within 60 days from the effective date of the decision. Investigation (I.) 97-07-018 will be closed upon the respondents' filing of a general rate case application. All compliance issues, including all the reconciliation of accounts and the refund report, shall be matters to be addressed in the general rate case.

Introduction and Procedural History

Hillview is an investor-owned water company serving rural areas in and around the community of Oakhurst in Madera County with approximately 1,370 customers, and thus designated a Class C water utility. Hillview was first organized in 1961, and was incorporated in 1978, giving the company a separate corporate existence from its owners. Respondent Forrester is currently a 50.5% equity holder; his sister is the holder of the remaining 49.5% equity interest.

Forrester and his sister received ownership of the company in December 1981 from their father, Linton Forrester (Linton). At that time respondent Forrester, who had previously been a hospital administrator for 18 years, also assumed responsibility for managing the company. He testified that he has been president of the company since 1983, and that he had no training in managing a water company before he began managing Hillview. For some time, Judith Forrester (Judith), now his ex-wife, assisted with bank keeping and other office responsibilities for the company. At some point in the early 1990s, the Forresters began to experience domestic difficulties, which ultimately resulted in the couple's divorce. (*See* Transcript (Tr.) 1055: 1-7.)

In 1984, Hillview interconnected four of its service areas to create a single operating system. We also combined all of Hillview's districts for ratemaking

purposes in that year. (Decision (D.) 84-11-089 (November 21, 1984).) Consequently, all of its accounts after that date reflect the system as a whole.

Up until 1996, Hillview did not utilize accounting or legal professionals in its operations. At that time, Hillview first engaged the services of Matt A. Peasley (Peasley), a Certified Public Accountant with small utility regulatory accounting experience, to perform a review of its 1994 and 1995 financial statements. Hillview has continued to retain Peasley to provide accounting services, and also utilizes regulatory legal counsel.

Starting in 1994, and continuing until 1996, irregularities in the company's regulatory compliance came to the attention of the Commission's Water Division through customer complaints. Following an audit and review of Hillview's operations, the Water Division asked the Commission's Consumer Services Division (Staff) to pursue a formal enforcement action.[3] We issued this OII on July 16, 1997 to determine whether the respondents had violated Sections 491, 581, or 825 of the California Public Utilities Code,[4] or Rule 1. Specifically, this proceeding was instituted to determine whether Hillview and/or Forrester had:

1. Violated Commission orders on extension of service to new customers;
2. Submitted falsified contracts or information in response to a request from the Commission;
3. Required customers to pay unauthorized fees for the connection of service and in turn rebated amounts in

[3] Because several staff organizational changes occurred both before and after the institution of this proceeding, we collectively refer to all Commission enforcement staff personnel as "Staff" throughout this decision.

[4] All statutory references are to this Code unless otherwise indicated.

contravention of tariff and service extension requirements to shopping center developers;

4. Diverted revenue collected expressly to repay a SDWBA loan from a special account, and applied the funds to other purposes, including personal business use by Forrester;
5. Submitted Advice Letter (AL) 53 for additional authority to expand facilities and increase indebtedness, and in it misstated the level of the special fund account due to diversion of funds in a manner prohibited by Commission rules or orders;
6. Overstated long-term debt and Hillview's plant account by showing loans secured by Forrester for personal business as utility purpose indebtedness and for expenditure on plant used by Hillview; and
7. Secured a personal loan of $350,000 from a developer, then asked the Commission for authority to repay it without acknowledging that the loan was used, or intended for use, for a personal or non-utility purpose.

The OII "initiate[d] an investigatory proceeding and place[d] the [r]espondents on notice" of the alleged violations, and contemplated that we would impose sanctions, order refunds, and establish a reduced revenue requirement and adjusted rates in the event that customers were overcharged because of the use of an excessive revenue requirement to set Hillview's rates. (OII, pp. 2, 4.) We directed Staff to serve a copy of its audit or investigatory report on the respondents and any other interested parties not later than 10 days before a prehearing conference (PHC), which we directed to be held before an administrative law judge (ALJ). (OII, p. 4.)

The OII noted that we were aware of the California Department of Justice's concurrent criminal investigation into the same conduct alleged in the OII.. (OII, p. 2.) Before we issued the OII, the Attorney General had seized investigative materials from our San Francisco and Los Angeles offices for their investigative

purpose pursuant to a search warrant. The criminal investigation was in progress for more than two years, but was ultimately discontinued because the statute of limitations had already run on the criminal offenses by the time the Department of Justice had obtained the records from us. While in progress, however, essential documents and records were effectively unavailable to the parties, and the ALJ held our investigation in abeyance after the respondents requested a stay until the documents were released.[5]

Staff issued the investigatory (or audit) report November 20, 1997.[6] On December 4, 1997, the ALJ conducted the initial PHC, one of several concerning the resolution of the enforcement issues raised in the OII.[7]

The parties attempted to negotiate a resolution of the issues under investigation, and on April 17, 2001, Staff and the respondents jointly filed a motion asking us to adopt a settlement agreement to conclude this proceeding. In D.02-01-041 (January 9, 2002), we concluded that the proposed settlement did not satisfy our criteria for adoption, and encouraged the parties to renegotiate certain features of the settlement agreement to address our concerns. The parties were unable to do so, however, and the investigation progressed to a formal evidentiary hearing following discovery. In a Ruling issued on September 10,

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[5] On April 25, 2000, the ALJ issued a ruling resuming our investigation upon receiving written confirmation that the criminal investigation was closed.

[6] In addition to serving the respondents, Staff apparently disseminated this report to aggrieved Hillview customers at or before the initial PHC.

[7] OP 7 of the OII required any proposal to increase rates or charges, as well as any individual complaints filed against Hillview, to be consolidated with the enforcement proceeding until further notice. Other PHCs were separately conducted in connection with those ancillary matters throughout the course of this proceeding, and the underlying issues were resolved in interim decisions.

2002, the ALJ identified the issues summarized above as those on which he would receive evidence at the evidentiary hearings. He also rejected consideration of certain issues proposed by Staff that were beyond the scope of the OII, including those relating to events that allegedly occurred after the OII was issued.

A six-day evidentiary hearings began on October 21, 2002, and concluded on December 19, 2002. The parties filed briefs in accordance with a briefing schedule established by the ALJ at the conclusion of the evidentiary hearings, and the proceeding was submitted on January 31, 2003.

Background

The allegations of regulatory noncompliance that caused us to institute this OII fall into two general areas of Hillview's operations. The first area is the company's borrowing and lending activities, particularly where indebtedness was incurred without specific prior Commission approval. Our concern, and that of the statutes we enforce, is that we must be in a position to prevent potential harm to the utility's customers from unjustifiable rates or degradation of service quality as a consequence of improvident borrowing by the company. The second area is that of the company's handling of advances and fees from developers and individuals for extending and increasing the company's facilities to meet the needs of new customers. Our concern here is with preventing the exaction of unauthorized fees and charges from these customers, resulting in unjust enrichment of the company and its owners. The facts that Staff brought to our attention about these two areas of Hillview's activities prompted our concern, and our decision to examine them more closely in this formal proceeding.

1. Hillview's Borrowing and Lending History

Several loan transactions, some of them interrelated with others, are the subject of this investigation. To understand the regulatory compliance issues listed above, we must recount a good deal of Hillview's borrowing history.

In 1980, we authorized Hillview to obtain a Safe Drinking Water Bond Act (SDWBA) loan from the California Department of Water Resources (DWR) (D.91560 (April 15, 1980).) Our decision required Hillview to establish a surcharge for each service area to provide a means for repaying the SDWBA loan. Hillview deposited the proceeds of the SDWBA loan surcharge in a special account maintained with Golden Oak Bank during the period pertinent to this proceeding. In 1987, we authorized Hillview to increase the borrowing from DWR by $262,283. (D.87-09-029, as modified by D.87-11-051.) Hillview used the same Golden Oak Bank account in connection with this new borrowing, and all customer surcharges continued to be deposited into this account.

As disclosed in the course of our Staff audit, between 1980 and 1994, Hillview made 14 withdrawals totaling $141,516.61 from this account without prior Commission approval, for reasons other than repaying the SDWBA loan. Specifically, seven withdrawals were made for rollovers of certificates of deposit in which Hillview had invested funds in order to obtain a higher interest rate. One withdrawal in the amount of $190 was made on June 30, 1982, which Hillview could not support or explain. Another, in the amount of $350, was made on May 31, 1992, to correct a deposit error, according to Hillview.

One withdrawal of $25,000 was made on January 31, 1992, to be used for Hillview's general expenses. Hillview admits that we did not approve this withdrawal, but states that the company sought DWR's prior approval and

received an affirmative response from DWR in a letter dated January 27, 1992. (Exhibit (Exh. 129.)[8]

The remaining four withdrawals were made, respectively, on June 30, July 31, September 30, and October 30, 1993 according to Hillview. The first was in the amount of $2,220.17; each of the others was in the amount of $4,440.33. Forrester testified that the purpose of these withdrawals was to "make payment on the $350,000 obligation of Hillview" to Judith Forrester and himself. (Exh. 82A, pp. 16-17.) This obligation apparently arose from a loan that the company had made to the Forresters shortly before, as explained in greater detail below.

Forrester concedes that none of these 14 withdrawals was made with prior Commission approval. He testified that Judith Forrester withdrew the money on each occasion without his knowledge. As an officer of the company who handled office duties before her relationships with Hillview and Forrester ended, she was apparently in a position to do so. The respondents offer no specific evidence to indicate when the Forresters began to experience marital problems, but the timing of these withdrawals coincided with the approximate period Forrester indicated their marital breakdown occurred.

The $350,000 personal loan to which this testimony refers is part of a second transaction that aroused our concern when it came to light in the Staff audit. The structure of this transaction is somewhat intricate, and subsequent refinancings further complicate our ability to trace its history. Essentially, the chronology of relevant events began in April 1991, when Hillview needed funds

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[8] Exhibit Numbers refer to the exhibits marked and received at the EH that commenced October 21, 2002 and concluded on December 19, 2002, and each exhibit is so identified

Footnote continued on next page

to build two water treatment plants. Forrester testified that Hillview's credit at the time made it unlikely that the company would be able to obtain a commercial loan on favorable terms. However, Hillview had what Forrester characterizes as a "long history" of dealing with the individuals involved in 41/49 Highway Junction Projects, Limited (41/49), a commercial real estate developer in Oakhurst, and proposed to borrow the funds from that entity. Although unwilling to loan funds to Hillview, 41/49 was willing to make a personal loan of $350,000 to Forrester and Judith, secured by the couple's real and personal property. Forrester testified that his intention was in turn to lend the $350,000 to Hillview, and that he did not believe at the time that Commission approval was necessary in order to do so.

On June 5, 1991, the Forresters entered into a formal written loan agreement with 41/49. (Exh. 24.) The loan was secured by 500 shares of Hillview stock, and by a deed of trust recorded against title to real property owned by the couple. As part of the consideration for the loan, Forrester agreed that Hillview would issue a letter to the County of Madera, stating that 41/49 had no further obligation to provide supply and storage for certain commercial developments in Oakhurst. Forrester testified that he did not know 41/49's purpose in requesting this letter as part of the transaction. The Forresters received the loan proceeds in two equal payments of $175,000, the first upon signing on June 5, 1991, and the second on June 5, 1992.

Between June 30, 1991, and the end of December 1992, the Forresters loaned Hillview $160,553.03, interest-free. Forrester testified that this obligation

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on the exhibit stamp. These exhibits should not be confused with similarly numbered exhibits received during hearings in other phases of this proceeding on earlier dates.

of Hillview is evidenced by cancelled checks, journal entries, and bank statements, which were collectively received as Exh. 113A. He further testified that Hillview used these funds to build water treatment plant.

The Forresters' expenditure of these funds constituted part of the basis of a subsequent transaction, in which Hillview nominally loaned $350,000 back to the Forresters, that was recorded by Hillview as of December 31, 1992. This transaction was structured as follows. First, the Forresters forgave the $160,553.03 owed to them for the previous six months' expenditures, canceling that debt. Second, the Forresters assumed an unpaid $47,900 loan obligation arising from a loan that Linton, Forrester's father, had made to the company at a much earlier time, canceling that debt also. Third, Hillview would receive a note from the Forresters in the amount of $141,546.97. The total of these three figures is $350,000, the amount of the loan. There is no indication in the record that a cash disbursement of $141,546.97 was ever made to the Forresters in satisfaction of this note, and the only indication that the Forresters ever received any cash relating to this loan from Hillview is the evidence that Judith Forrester made four withdrawals totaling $15,541.16 between June 30 and October 30, 1993.

Hillview's 1992 Annual Report to the Commission, filed with the Water Division on March 6, 1993, reports this transaction as part of the company's long term debt, specifically as a "loan *from* individual" with a 12% interest rate and a 14-year term, incurred on June 7, 1992. (Exh. 26, p. 3, italics supplied.)[9] Forrester admits that this entry is erroneous. He testified that the error occurred because

[9] The promissory note was actually signed by Forrester on behalf of Hillview on June 5, 1992. (*See* Exh. 117.)

the transaction was incorrectly recorded on Hillview's books, specifically by inadvertently being combined with another entry.

Notwithstanding the absence of evidence that the Forresters ever received all of the $141,546.97 they purportedly borrowed from the company in this transaction, Forrester testified that he paid off the full amount of the note in the first seven months of 1998. (Exh. 82A, p. 24.) The details of this reimbursement are set forth in Exh. 118, a compilation prepared by Peasley from Hillview's records to comply with the provisions of a loan agreement with another lender in a more recent refinancing.[10] This document reflects that there were intervening transactions (discussed below) with respect to the original loan back to Forrester, because the repayment otherwise is not consistent with the record of funds received by the Forresters, or with the names shown for the borrowers reflected in Exh. 118.

Note 2 of the compilation reports that on January 31, 1998, Jacqueline Forrester (Jacqueline), who was by then Forrester's wife by remarriage following the dissolution of his marriage to Judith, agreed to apply the balance of a series of notes due her from Hillview, plus accrued interest, toward repayment of the $141,547 (a rounded figure). These notes reflected various amounts she had loaned to the company between April 9, 1997, and January 16, 1998, totaling $85,017. The remaining repayments reported in the compilation were in the form of a transfer of office furniture and equipment with a value of $4,288 from Jacqueline Forrester to the company on January 31, 1998; a cash payment of $40,000 on May 15, 1998; and another cash payment of $12,242 on July 7, 1998.

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[10] This compilation is not audited, and is based solely upon the representations of Hillview's management.

Note 4 explains that the latter sum was part of a cash payment of $28,997 received from the Forresters, and that the remaining $16,755 was applied against a current cash receivable due to Hillview from Forrester alone.

The intervening transactions occurring between the loan to the Forresters recorded on December 31, 1992, and the apparent payoff of the remaining balance of that loan in 1998, are a series of refinancings that were accomplished in and after 1994. Forrester testified that in that year Hillview refinanced its $350,000 obligation to Forrester and Judith by obtaining a loan from the United States Small Business Administration (SBA) through Golden Oak Bank in the amount of $424,000. Forrester admits that he did not obtain Commission approval for this loan, because he was "focused on Hillview's needs and [his] personal problems with [his] ex-wife." (Exh. 82A, p. 25.)

Hillview's unauthorized borrowing had come to our attention by the time we granted Hillview's August 2, 1993 request for a general rate increase. In Resolution (Res.) No. W-3833, issued March 9, 1994, we noted that Hillview had incurred long-term debt without Commission authorization as required by Section 816, and that the company should request authorization for the debt it had incurred as soon as possible. The Commission awarded Hillview a rate of return at the low end of the range recommended by Staff in that rate case as a consequence of Hillview's failure to comply with this loan authorization requirement.

Several months later that year, Hillview obtained two new loans from the National Bank of Cooperatives (CoBank). The first, in the amount of $540,000, was obtained to refinance the existing unauthorized commercial debt. The other, in the amount of $960,000, was to be used to refinance the existing

SDWBA loan and to pay for approximately $266,650 in improvements. Hillview had sought prior approval of this transaction from the Commission by filing a draft AL on October 6, 1993. We granted the request on November 22, 1994, in Res. No. F-632, which noted that Hillview was in violation of Section 825 for failing to secure prior approval of the commercial debt, citing three Golden Oak Bank loans and one from General Motors Acceptance Corporation. We also granted authority for the company to apply the SDWBA reserve, and any remaining surcharge overcollection relating to the SDWBA loan, to reduce the amount of the $960,000 CoBank loan.

Using the proceeds of the CoBank loan, Hillview repaid the SDWBA loan. However, in Res. No. F-644 (March 13, 1996) we granted Hillview authority to use $112,000 of the remaining SDWBA loan reserve and surcharge overcollection to finance the construction of certain new facilities, rather than paying down the CoBank loan. We did so to enable Hillview to avoid additional borrowing that would otherwise have been necessary to finance these improvements. Staff claims that Hillview understated the balance remaining in the surplus account by $135,812 after repaying the SDWBA loan, and that as a consequence, Res. No. F-644 granted Hillview authority to borrow more funds than necessary from CoBank. Staff contends that this resulted in overstatement of the company's rate base, producing higher rates for customers.

2. Fees for Facility Additions

Hillview's history is closely associated with the development of real property by builders and developers in the rural territory it serves, and its

facility expansion is interrelated with that property development.[11] In 1985, the company first began charging a "Supply and Storage" fee under the terms of a main extension agreement it executed with the developer of a development known as Indian Springs. Under the agreement the developer would pay Hillview a specified amount for supply and storage for each lot in the development that was connected for service.

Under this arrangement the obligation to pay the fee to Hillview was that of the developer, who in turn passed the fee on to each individual lot purchaser. As a consequence, no individual purchaser made a payment for supply and storage fee directly to Hillview. Hillview says it agreed to this arrangement, under which the developer paid the fee on a per-lot basis at the time each service connection was made, rather than all at once when it commenced development of the entire parcel, for two reasons. First, it spared the developer from having to commit costly capital to the payment of fees that it might not be able to recover for many years. Second, Hillview did not anticipate that the supply and storage facilities to be financed with these fees would be needed until the development grew to a certain size, so the company did not need to collect the funds immediately in Forrester's judgment.

Over time this practice was converted to a third-party beneficiary arrangement under which the individual lot purchasers each paid a per-lot share

[11] The pace of Hillview's facility expansion in the past two decades accelerated until we found it necessary to impose a moratorium on new service pending the addition of supply and the provision of certain required treatment facilities. Financing and construction of these improvements were delayed until recently because of the cloud over Hillview's financial circumstances that resulted from the other issues raised in this investigation. Those issues were resolved in other phases of this proceeding, as required by OP 7 of the OII.

of the total supply and storage fee directly to Hillview, in contrast to the previous practice, under which the developer collected such fee from each new individual lot purchaser and then remitted it to Hillview. This fee was paid on behalf of the developer at the time a lot owner desired the service, and Hillview agreed to accept payment in this manner. In addition to supply and storage fees, fees for main extensions (to the extent that they were the responsibility of the developer) also were handled in this manner.

The form of written main extension agreement Hillview used to establish these obligations was one of several forms approved by the Commission to implement tariff rules. Hillview modified one version of this form by inserting a provision concerning payment of the supply and storage fee, a term that is not used in any applicable tariff. Forrester testified that the company used the term interchangeably with "special facilities fee," a tariff term. Hillview ceased to use "supply and storage fee" after the practice came under criticism by Staff.

Forrester testified that the specific method of payment of these fees depended upon the circumstances of the developer or the particular development. Payment of main extension fees was required from a developer either initially upon execution of a main extension agreement, or on a per-lot basis. A developer that negotiated a per-lot supply and storage fee in its main extension agreement either had to pay a proportional fee directly to Hillview upon connection of water service to a lot, or out of escrow from the developer's proceeds upon sale of the lot. Forrester testified that the selection of the method was left to negotiation between the developer and the lot purchaser.

Forrester testified that he now understands that, following revision of the applicable tariff in 1982 and until at least 1993, supply and storage fees were

permitted to be collected only from developers. At the time of these events, on the other hand, he believed it was permissible to accept payment of these fees from individual lot purchasers on behalf of the developer. All of these fees were recorded as Contributions in Aid of Construction (CIAC) and were used to construct supply and storage facilities. They were not included in Hillview's rate base, with the consequence that the company has not earned any return on them, and customers other than those within the affected developments did not pay for the facilities. (Exh. 87A, p. 10.)

The procedure Hillview followed for recording supply and storage fees was to list in its Supply and Storage Fee Account Passbook (Exh. 217) the name of the person for whose lot the fee was paid, the lot number, the date, and the amount paid. The funds were then deposited into the Supply and Storage Fee account. (Exh. 87A, p. 10.) Notwithstanding the existence of these records, the parties have not been able to compile a reliable list of all such fees collected that could be used to refund amounts Staff claims are due under tariff requirements. As nearly as we can determine, this is because the way in which the receipt of some of the fees was recorded may not have accurately reflected their purpose, and because the fractionated manner of collecting these fees on individual lots rather than entire development parcels, coupled with the subsequent resale of some of the lots, make them impossible to trace. Even when the respondents were working cooperatively with several members of our Staff over a lengthy period of time to develop an accurate list as part of their settlement efforts, they were unable to do so. The best list they could compile (Exh. 102) indicated in many instances that proof of payment of the fee was missing, and would have to be furnished by claimants if Hillview became obligated to refund the fees under the terms of the settlement.

In 1993, Staff performed a limited audit of Hillview, and examined the company's CIAC account as part of that audit. In their Report on Audit, dated June 25, 1993 (Exh. 105), the auditors stated:

> Initially, [we] had concerns with some amounts recorded in the CIAC account which Hillview called "Supply and Storage Fees" in [its] contributions contracts and in [its] accounting records. This concern focused on whether these fees should be considered to be contributions under existing tariffs. Further examination revealed that these amounts in fact were for Other Special Facilities as allowed under tariff rule 15 and were appropriately recorded in Hillview's CIAC accounts. After clearing up this concern [we] found Hillview's contributions and advance account balances…to be correct. (*Id.*, p. 3.)

As a result of correspondence from members of our Staff beginning in early 1994, the respondents became aware that the Water Division believed Hillview's direct receipt of supply and storage (or special facilities) fees from any individual customer, under any circumstances, was contrary to Commission-approved tariffs. Accordingly, in June of 1994, Forrester instructed his staff not to include supply and storage fees in the company's Main Extension Contracts or accept such fees from individual lot purchasers, and the practice was discontinued.

Discussion

With this factual background we turn to a discussion of the specific issues raised in the OII, in the sequence established by the ALJ's Ruling of September 10, 2002.

1. Did the Respondents Violate Commission Orders on the Extension of Service to New Customers?

The extension of distribution mains from Hillview's basic production and transmission system to serve new customers described in this investigation is governed by the terms of the company's Tariff Rule 15, a standardized water utility tariff approved by the Commission. The material provisions of Tariff Rule 15 in this dispute were in effect from 1982 throughout the period subject to investigation. The parties agree on the substance of Tariff Rule 15, but differ as to their interpretation.

Tariff Rule 15 requires a main extension contract to be executed by the utility and the applicant(s) in advance of the construction work. The Commission has different versions of this main extension contract to be used for individual customers and for real estate developers and builders. Here, we are concerned with the version of the main extension contract that applies to real estate developers and / or builders since the transactions at issue involve Hillview's dealings with the developer of a real estate development known as "Indian Springs." (Tariff Rule 15 defines the latter to include individuals and others who divide a parcel of land into two or more portions, or who engage in the construction and resale of individual structures on a continuing basis. (Paragraph A.3.b.)) Before we examine the terms of Hillview's Tariff Rule 15, we restate here the relevant parts of this tariff rule:

C. Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments, Commercial Buildings, or Shopping Centers.

1. Advances

    a. Unless the procedure outlined in Section C.1.c. is followed, an application for a main extension to serve a new subdivision, tract, housing project, industrial development, commercial building, or shopping center shall be required

> to advance to the utility, before construction is commenced, the estimated reasonable cost of the extension to be installed. . .
>
> b. If special facilities consisting of items not covered by Section C.1.a. are required for the service requested and when such facilities to be installed will supply both the main extension and other parts of the utility's system, . . . the cost of such special facilities may be include in the advance, subject to refund as hereinafter provided, along refunds of the advance cost of the extension facilities described in Section C.1.a. above.
>
> c. In lieu of providing the advances in accordance with Section C.1.a. and C.1.b., the applicant for a main extension shall be permitted, if qualified on the judgment of the utility, to construct and install the facilities himself, or arrange for their installation pursuant to competitive bidding procedures initiated by him and limited to the qualified bidders . . .
>
> d. If, in the opinion of the utility it appears that a proposed main extension will not, within a reasonable period, develop sufficient revenue to make the extension self-supporting, or if for some other reason it appears to the utility that a main extension contract would place an excess burden on customers, the utility may require nonrefundable contributions of plant facilities from developers in lieu of a main extension contract.

According to this tariff rule, the sum paid by an applicant for a main extension is an advance, and is recoverable through refunds paid under a schedule specified in Section C.2.c. of the tariff. An exception is made if, in the opinion of the utility, it appears that a proposed main extension will not, within a reasonable period, develop sufficient revenue to make the extension self-supporting, or if for some other reason it appears to the utility that a main

extension contract would place an excessive burden on customers. In this event the utility may require non-refundable contributions of plant facilities *from the developer in lieu of a main extension contract.* (Paragraph. C.1.d.)

Staff contends that because of the cited language in Paragraph C.1.d above, these tariff requirements must be read in the alternative: Either a special facilities (or supply and storage) fee is refundable under the terms of a main extension contract, or it is a discretionary non-refundable contribution from the developer.

The respondents, on the other hand, argue that refundable advances under main extension contracts and nonrefundable contributions under Paragraph C.1.d are not mutually exclusive. They cite D.02-01-014 (January 9, 2002) in *Application of Del Oro Water Co., Inc., etc.,* in support of their contention that Hillview had the prerogative to receive the sums involved either as refundable advances or as nonrefundable contributions. The respondents also argue that, as to any payment regarded as advances, Paragraph C.1.d. does not specify the time or manner of payment, and that per-lot installment payments of special facilities fees was not prohibited by the tariff. They also contend that Tariff Rule 15 did not prohibit the third-party beneficiary arrangement.

We disagree with the respondents' interpretation of Tariff Rule 15. This rule expressly specifies how main extension contracts are to be administered by the company. Paragraph C.1.b. states that special facilities fees (orsupply and storage fees) collected from the applicant as advances must be refunded by the company to the customers.[12] Paragraph C.1.d. states that non-refundable

[12] Under Hillview's Tariff Rule 16, the company was generally forbidden from charging individual customers a fee for making new service connections until June 9, 1992, but

Footnote continued on next page

contributions are allowed, only if Hillview determines that its main extension, will not within a reasonable period, develop sufficient revenue to make the extension self-supporting. If Hillview was confused or unsure about the terms of this tariff rule, it could have sought clarification from the Commission. However, it did not do so. Whether it is a non-refundable advance or a non-refundable contribution, Hillview must make its election clearly known to the applicant and execute its election of fees in a proper manner.

In this proceeding, Forrester testified that Hillview collected the supply and storage fees pursuant to Paragraph C.1.b. Hillview admits violating the tariff and concedes that it was not proper to alter the approved form of its main extension contract to collect an unauthorized "supply and storage" fee. The record also shows that no refunds of the advances collected by the company have been provided to customers as required under the tariff. To complicate matters, Hillview admits that it mistakenly use the wrong form of agreement on a number of occasions, confusing the contract form used for developers with that used for individuals. Furthermore, the inability to reconstruct the record of fee payments to determine reliably all of the person who might have been entitled to a refund is compelling enough evidence that the third-party arrangement did not carry out the purposes of Tariff Rule 15. Consequently, we agree with Staff that there is substantial evidence of Hillview's violation of Commission-approved tariff procedure in collecting "supply and storage fees" from individuals.

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following that date, as a Class C utility, Hillview could lawfully accept from such customers amounts in contribution as connection fees, and amounts in contribution as facilities fees, calculated in accordance with Commission-approved schedules.

All of these violations by Hillview have substantially harmed its customers. We recognize that the fees collected for main extensions and special facilities were recorded in its CIAC account, as our auditors found in 1993 and that the funds in that account were used for the e construction of facilities in districts with which they were associated, and not included in its rates. However, the fact remains that Hillview collected supply and storage fees in contravention of its tariff rule and failed to properly refund those fees back to the customers as required by the tariff and as a consequence, caused substantial financial harm on those customers that were forced to pay the fees. Those customers must be made whole and tariff requires us to do so by ordering the company to refund those fees back to the customers.

REFUNDS:

By Forrester's own admission, Hillview collected the supply and storage fees as advances under Paragraph C.1.b, and not as non-refundable contributions under Paragraph C.1.d between 1985 to June, 1994. Although Hillview stopped including the supply and storage fees in the company's Main Extension Contracts or accept such fees from individual lot purchasers in June, 1994, the company yet to refund any of those fees back to the customers as required by the tariff and thus, still in violation of Rule 15To date, no refunds have been issued. Consequently, we will now order the company to refund the supply and storage fees it unlawfully collected from the individual lot owners in accordance with the terms of Tariff Rule 15.

Paragraph C.2. of this rule states that refunds should be issued as follows:

C.2. Refunds

a. The amount advanced under Sections C.1.a., C.1.b., and C.1.c. shall be subject to refund by the utility, in cash,

> without interest, to the party or parties entitled thereto as set forth in the following two paragraphs. The total amount so refunded shall not exceed the total of the amount advanced and for a period not to exceed 40 years after the date of the contract.
>
> b. Payment of refunds shall be made not later than June 30 of each year, beginning the year following execution of contract, or not later than 6 months after the contract anniversary date if on an anniversary date basis.
>
> c. Whenever costs of main extensions and/or special facilities have been advanced pursuant to Section C.1.a., C.1.b., or C.1.c., the utility shall annually refund to the contract holders an amount equal to 2-1/2 percent of the advances until the principal mounts of the contracts have been fully repaid. . .
>
> In no case shall the refund on any contract exceed the amount advanced.

Consistent with the terms of this tariff provision, the respondents shall provide to each customer 2 ½ percent of the total amount of the supply and storage fees they collected annually until the total amount is paid off. Certainly, since Forrester admits that Hillview collected the supply and storage fees pursuant to Paragraph C.1.b., he had no expectation of any limitation on refund of those supply and storage fees he collected as advances.

In order for us to determine who should receive refunds in accordance with Tariff Rule 15, we must first identify which Hillview customers paid the supply and storage fees during the subject years. Staff and respondents each submitted a list of customers who paid the supply and storage fees in this proceeding. Unfortunately, however, neither party was able to support or validate its customer list during the evidentiary hearings. The parties also jointly

submitted a customer list, which was prepared for the settlement (also known as the "Joint Report" list). The Joint Report list was based on documentation provided by Hillview, including main extension contracts, receipts and Hillview's supply and storage fee passbook. It appears that the Joint Report is more comprehensive that either of the customer lists provided by the Water Division and the respondents. The Joint Report list, according to Hillview, however, includes a large number of persons for whom the parties agree that there was no "proof" that Hillview received payment on such person's lot.

Although the Joint Report provides names of many customers who paid the supply and storage fees to Hillview, we are disinclined to use that list as a basis for the refunds because there is no evidence of "proof" of payment for some of the customers on that list. More importantly, we are hesitant to use the Joint Report because even this list does not include each and every customer that paid the fees.

Given that none of the lists available to us provides a complete and accurate list of all of the customers that paid the fees, we will allow the individual customers to make a refund claim directly with the company, instead of requiring the company to refund the fees to those customers in the Joint Report. This will ensure that all Hillview customers who paid the supply and storage fees are provided with an equal opportunity to get their money back from the company. We do not want to omit or preclude any customer who paid the fees from obtaining the refund.

In order to ensure that all Hillview customers are notified of the their right to seek a refund, we will require the company to publish a refund notice in the most widely circulated local newspaper in its service territory. We will require the company to publish the notice twice for duration of one-week per

notice. The first notice shall be published within 30 days from the effective date of this decision and the second notice shall be published three months after the publication of the first notice. Hillview shall submit a draft of the notice and obtain an approval from the Water Division prior to the publication of the refund notice.

In order to ensure that the refunds are properly administered, we will implement the following procedure for the refund claim process:

1. Within six months from the effective date of this decision, Hillview customers who paid the supply and storage fees between 1986 to June, 1994 shall submit a written claim for refund directly with the company;
2. The written claim shall include a proof of evidence, either a receipt or any other document, that demonstrates payment of the supply and storage fees;
3. No interest shall be added to the amount of the supply and storage fees for refund purposes;
4. Within 60 days from the receipt of a written refund claim, Hillview shall respond to the claim by: (1) issuing the refund to the claimant; (2) requesting for more documentation; or (3) denying the claim with an explanation for the denial;
5. With respect to the refund issuance, Hillview shall abide the terms of Section C.2. of Tariff Rule 15. Specifically, Hillview shall provide to each customer 2 ½ percent of the total amount of the storage and supply fee it collected on an annual basis until the total amount of the fee is paid off.

6. If there is a dispute between the claimant and the company and the dispute cannot be resolved between the claimant and the company, the claimant may file a formal complaint with the Commission. The Commission will address the complaints on a case-by-case basis.[13]

7. If Hillview shall a prepare and include a comprehensive report on the refunds for the Commission's review in its general rate case application, which shall be filed within nine months from the effective date of this decision.

STATUTE OF LIMITATIONS:

Respondents assert that the applicable statute of limitations bars recovery of refunds. They assert that, under Section 736, a claim for damages, namely, the collection of unauthorized supply and storage fees, is three years. Since the OII in this proceeding was issued on July 17, 1997, respondents assert that they can be no recovery for the collection of the supply and storage fees by Hillview prior to July 16, 1994. Respondents also point out that Commission staff, in a prehearing conference, conceded that the statute of limitations "does bar refunds to utility customers after – previous to the three years before the OII was filed."

The Water Division, on the other hand, states that refunds are a legal requirement of Hillview's tariffs. The Water Division states that Hillview used

[13] The parties shall attempt to use the informal process available at the Commission, by contacting the Consumers Affairs Branch, to resolve any refund disputes before filing a formal complaint.

the terms "supply and storage fees" and "special facilities" fees interchangeably and that, under Tariff Rule 15, special facilities must be fully refunded, except when charged under Section C.1.d. The Water Division further states that the three-year statute of limitations found under Section 736 applies only to actions filed by customers. The Water Division states that this matter is not "a claim for damages" as the respondents assert, but rather a matter that is an integral part of an investigation by the Commission.

Section 736 states that "All complaints for damages resulting from the violation of any of the provisions of Section 494 or 532 shall either be filed with the [C]omission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competition jurisdiction within three years from the time the cause of action accrues, and not after. . ." We recognize that, under Section 736, a claim for damages resulting from the violation of any of the provisions of Section 494 or 532 must be filed with the Commission, or any other court of competent jurisdiction, within three years. However, Section 736 and the three-year statute of limitations found therein, does not apply here. This proceeding is about a tariff violation committed by Hillview, not a claim for damages. By ordering Hillview to refund the advances it collected from its customers, we are merely enforcing the terms of its Tariff Rule 15. This tariff provision expressly requires the company to refund all advances it received under the main extension contracts, pursuant to Section C.1.b, within 40 years from the date of the contract. Even if Section 736 does apply to this case, which we conclude does not, we are not barred by the statute of limitations because the company has violated and is still violating Tariff Rule 15 because it has not provided any refunds to the customers. Section C.2.c. of Rule 15 expressly requires Hillview to annuallyrefund to the customers an amount equal to 2-1/2

percent of the advances until the principal mounts of the contracts have been fully repaid. No such refund, however, has ever been provided by the company to the customers.

Moreover, we agree with WD and conclude that Section 736 does not apply to this proceeding because this proceeding is not a complaint case filed by an aggrieved customer seeking damages from the company, but is an investigatory proceeding instituted by the Commission to determine whether or not the company has violated our rules and/or statutes. The Commission has separate rules and procedures for handling and processing complaint cases and for OIIs. If this proceeding were a complaint filed by a Hillview customer seeking damages resulting from the improper charges by the company, Section 736 would apply and the customer would be limited to recovering any overcharges that occurred during the three years immediately prior to the date the customer filed the complaint. However, because this is an investigatory proceeding instituted by the Commission to determine whether Hillview has violated its tariffs, Section 736 does not apply.

2. Did the Respondents Submit Falsified Contracts or Information to the Commission?

The allegation that the respondents furnished falsified documents to the Commission in response to a request relates to an incident that occurred in the course of our auditor's 1996 investigation. In a data request the auditor asked for lists of Hillview's new customers from 1993 and 1995. The response for this request was due in seven days.

Instead of responding with a list of these customers, Hillview responded by submitting photocopies of these customers' application forms. The lower portions of the forms were covered with a form of different

appearance that had blanks for recording fee payments. Although these documents collectively comprised the customer lists requested by the auditor, Staff alleges that Hillview covered the lower portion of the forms when copying them in an effort to hide information and mislead the Commission.

Jacqueline Forrester, who by the time of these events was Hillview's office manager, credibly explained this incident in her testimony at the evidentiary hearings of May 20, 2000, in this proceeding.[14] Essentially, she explained that the forms were copied and produced in lieu of creating a computer-generated list, because Hillview's computer system at the time did not have the capability to do so, and because of the short deadline given by the auditor. The bottoms of the forms were covered to prevent confusion, as the company had adopted a second, different form, and the information recorded thereon was not required in order to respond to the data request. Staff accepted Jacqueline Forrester's explanation at the earlier evidentiary hearings, and it is credible. There is no new information in the record that would cause us to doubt Staff's earlier determination. We find that, although the lower portions of application forms were admittedly covered for photocopying, this fact did not represent a deliberate effort to mislead the Commission, nor did it hinder Staff's investigation.

[14] Jacqueline Forrester died after giving this testimony, and the transcript of her explanation was received as Exh. 83 in addition to being part of the official transcript herein.

3. Did the Respondents Charge Customers Unauthorized Fees for the Connection of Service and in Turn Rebate Amounts in Contravention of Tariff and Service Extension Requirements to Shopping Center Developers?

Staff alleges that in 1991 the respondents entered into an arrangement whereby Hillview would assist 41 / 49, the developer of the Old Mill Village commercial development, by getting Hillview customers to reimburse 41 / 49 for its special facilities fees. The customers to which this allegation relates were Longs Drugs and Vons Market, each of which built retail facilities on lots in the development. As set out in Staff's audit report, which constitutes its only evidence in support of this contention,

> When 41 / 49 completed construction of a building in a shopping center and the building was ready for occupancy, 41 / 49 advised the store, market, or other retailer that was going to occupy the building that supply and storage fees would have to be paid to [Hillview] in order for it to have water service. When the store, market, or other occupant paid the money…[Hillview] immediately turned the money over to 41 / 49. (Exh. 68, p. 27.)

There is no controversy that in concept this is a correct rendition of the procedure that was followed. Staff admits that this produced no direct benefit to Hillview, but claims that it benefited 41 / 49 by making its properties appear less expensive and thus more attractive, and also benefited Forrester and his now ex-wife Judith, by constituting part of the consideration for the $350,000 loan they received from 41 / 49.

The respondents explain that 41 / 49 had already paid plant and special facilities fees up front for Old Mill Village, and that the amounts returned to 41 / 49 were simply refunds of advances under the main extension agreement. The respondents also admit that they should have entered into main extension

contracts with Longs and Vons under Paragraph C.2.d, and that this was not properly accomplished.

The $350,000 loan transaction between 41/49 and the Forresters is explained in detail above. There is no evidence in the record that this was a *quid pro quo* arrangement, and Forrester denies that it was, because 41/49 had already fulfilled its obligation to pay these fees. Although we are concerned about the closeness of the relationship and informality of the business dealings between 41/49 and the respondents, which aroused suspicion when they came to light during Staff's investigation, Staff concedes that Hillview's customers suffered no harm as the result of Hillview making these refunds.

Hillview admits that it did not carry out the refund transaction in accordance with Tariff Rule 15, but our inquiry must end there. Any contention by Staff that the payments were "illegal" or part of an "unlawful scheme" are either unsupported by the record or beyond the enforcement jurisdiction of the Commission.[15] We will not impose any penalty in relation to this allegation.

4. Did the Respondents Divert Revenue Collected Expressly to Repay a SDWBA Loan from a Special Account and Apply the Funds to Other Purposes, Including Personal Business Use by Forrester?

Staff notes that Res. No. F-632 authorized the respondents to enter into the CoBank loan contracts for $540,000 and $960,000 for the specific purpose of

[15] As explained in our Introduction above, all of these contentions were investigated by the California Attorney General with Staff's cooperation. That investigation was terminated, and no indictment was sought in Madera County Superior Court. We understand that the investigative documents were then turned over to the United States Internal Revenue Service.

refinancing existing unauthorized commercial debts, namely the SDWBA loan and $266,650 in improvements. Staff alleges that some loan proceeds instead were used to pay Forrester's past due property taxes and electric bills, and for some construction activities that had already been reimbursed through surcharges collected from customers.

The underlying facts are explained earlier in this decision. Regarding Hillview's construction activities, Res. No. F-638 (April 26, 1995) authorized Hillview to increase its loan agreement by $100,000 over the amount approved in Res. No. F-632, to reimburse Hillview for funds already spent for facility construction and improvements, and those improvements were made. As to the allegations regarding improper payment of taxes and electric bills, the respondents point out that Forrester personally owns the building in question and leases it to Hillview under the terms of a triple net lease that obligates Hillview, not Forrester, to pay these expenses. (Exh. 74; Tr.881: 9-23.) Hillview's payment of these expenses was therefore entirely proper.

All of the evidence indicates that we examined and approved these transactions before we issued the OII. The respondents have effectively rebutted any showing made by Staff to support its theory, and that showing is weak.[16]

5. Did Hillview's AL 53 Misstate the Level of the Special Fund Account Due to Unlawful Diversions?

As explained above, Hillview filed AL 53, asking the Commission to modify Res. No. F-632 by permitting diversion of $112,463.42 of surplus funds from paying down the CoBank loan to paying for new facilities. We granted this

[16] We note that Staff has devoted only eight lines of argument to this theory in its Opening Brief. This fact suggests to us that the issue is not as significant as it may have appeared to Staff at the time the audit report was written.

request, with the net effect that Hillview's indebtedness increased by that amount.

Staff contends that the net surplus in the loan account was $281,734 on October 23, 1995, when the respondents filed AL 53, and that the special fund was accordingly understated by $169,271. Staff argues that the present value of this figure at the time of the hearing was $200,467. (Exh. 22A.) The derivation of the claimed understatement remains a mystery. The utilities engineer who prepared Exh. 22A did so on the basis of figures in the auditor's workpapers, and calculated account balances by plugging those figures into a formula that in turn relied upon an unsupported assumption. The workpapers were marked for identification at the hearing, but Staff declined to offer them in evidence. Staff has not carried its burden of proof on this issue, however, we will require appropriate relief if an inconsistency in this account is revealed in the reconciliation to be prepared pursuant to our Order.

6. Did the Respondents Overstate Long-Term Debt and Hillview's Plant Account by Misrepresenting Loans Obtained by Forrester for Personal Business?

Hillview's history of long-term debt and plant account is largely recounted above. Staff relies solely upon Chapters 7 through 12 of its audit report (Exh. 68) in support of the allegations that there is no documentation for expenditures ostensibly used for utility plant, that the respondents misused corporate assets, and that these circumstances explain why the respondents did not seek Commission approval for the "initial" [SDWBA?] loan.[17]

[17] Staff's Opening Brief devotes a short paragraph of argument to these charges, accusing Hillview's management of a "wholesale breach of trust," and representing a

Footnote continued on next page

The Staff auditor prepared Chapters 7 through 12 of the audit report (Exh. 68). He adopted all of this material as his testimony at the evidentiary hearings in lieu of providing prepared testimony (Tr. 447 – 478). He was extensively questioned about this report by respondents' counsel on cross-examination (Tr. 478 – 686; 689 – 790) and recross (Tr. 878 – 890), and much of the report was seriously discredited. Little of his testimony was effectively rehabilitated on redirect. His answers to many questions were incomplete, unresponsive or evasive. These factors call into question the reliability of the portions of Exh. 68 that he sponsored, and we accord them little weight.

The portions of Exh. 68 sponsored by this witness are the heart of the investigative report the OII directed Staff to prepare. Staff issued the original report on November 20, 1997, and Exh. 68, an amplification of that report, in August 2002, offering it in substitution of the original as Staff's principal testimony. Yet despite the passage of more than five years since we had issued the OII and Staff had issued the audit report, Chapters 7 through 12 remained untouched in the revised version. By contrast, the respondents made a credible showing on the propriety of its loans and expenditures.

Notwithstanding the absence of substantial evidence to support Staff's broad accusations, several discrete issues relating to this aspect of the OII were raised by the parties and should be addressed. Fortunately, there is sufficient reliable evidence to make findings on these issues. We do so to enable the parties to prepare a final reconciliation of Hillview's accounts, so that its financial condition may be accurately established.

"flagrant flouting of state law and Commission authority," but contains no discussion of any evidence demonstrating that such serious allegations are justified.

First, with regard to the transaction in which Hillview made a $350,000 loan to Forrester and Judith in 1992, a question arose as to whether the Forresters' assumption of a $47,900 loan to the company from Linton was valid consideration. The original debt derives from Linton's payment of Hillview's utility bills, satisfaction of a judgment against the company, and the deposit of $16,000 in cash to the company's general account. Altogether, Linton advanced a total of $50,000 on the company's behalf, but by December 1982 Hillview had repaid only a small portion of this obligation, and the remaining $47,900 was on Hillview's books until the 1992 transaction. We had occasion to review this obligation as early as January 21, 1982. (D.82-01-105 in Application (A.) 61148; *see also* D.82-12-062 in A.82-06-073 (December 15, 1982).) Forrester provided a credible explanation of its origin, and Staff has not persuaded us that any part of the obligation was invalid.

Second, with respect to the 1992 loan from the Forresters to Hillview, the respondents admit that Forrester should have immediately loaned $141,546.97 in cash to Hillview instead of executing a note. Forrester attributes his failure to do so to unspecified "personal problems." (Respondents' Brief, p. 28.)[18]

Third, Forrester admits that a book entry made in December 1992 that included the $350,000 obligation of the Forresters was improperly recorded, resulting in confusion of the company's accounting. He attributes this to the lack

[18] We infer from Forrester's other testimony that this is a reference to the breakdown of his marriage to Judith, and that community property problems may have flowed from this event, impairing Forrester's ability to raise cash at the time. The occurrence of such personal problems does not excuse any failure of regulatory compliance, and we do not condone Forrester's actions in so finding.

of sophistication of Hillview's bookkeeping staff (including Forrester himself) at the time the transaction was recorded. Peasley discovered the error after he was retained and learned that the accounts related to surcharge-funded utility plant, CoBank loans, income taxes, deferred taxes, and CIAC all needed adjustment before the 1995 financial statements could be prepared.

Peasley testified that Hillview had made an error in recording contributed property conveyed by 41 / 49, as well as the loan payable by Forrester. The company did not correctly record amounts to CIAC equal to the conveyed property, and actually recorded a slight decrease in CIAC. Hillview's records needed an adjustment of $141,546.97 to increase (credit) CIAC. In the loan transaction, Hillview failed to record a loan due from Forrester of $141,546.97(debit). (Exh. 81.) In sum, the entry related to the $350,000 obligation should have reflected:

- Cancellation of the prior loans of $160,553.03 from the Forresters;
- Assumption of Hillview's debt of $47,900 to Linton;
- A receivable from the Forresters of $141,546.97; and
- A debt payable to Forrester of $350,000.

A separate entry should have been made for plant, reflecting:

- $131,158.36 of utility plant, and
- $131,158.36 CIAC.

(Exh. 81, pp. 2-3, 123, and 124; Respondents' Brief, pp. 22-23.)

The consequence of this mistake was that for the 1994 test year, on the basis of which Hillview's rates prior to 2001 were adopted, CIAC was

understated by $141,546.97, and rate base was overstated by the same amount. This circumstance in itself would have resulted in rates that were too high.[19]

All of the foregoing evidence indicates a need for further reconciliation of Hillview's accounts. Therefore, we will order the respondents Hillview Water Company, Inc. (Hillview) and Roger L. Forrester (Forrester), the principal shareholder and president, to file a general rate case application within nine months from the effective date of this decision, which includes a final reconciliation of Hillview's accounts for the period from January 1, 1991, to and including June 30, 2003. In the application, Hillview shall fully explain all of the discrepancies and irregularities identified in the Findings of Fact. This reconciliation shall include, but not be limited to, the following:

1. A full accounting of its SDBWA and CoBank loan surcharge accounts including: (a) amounts collected from its customers, (b) amounts deposited into the bank, (c) repayment of loan principal and interest to DWR, (d) interest

[19] Forrester testified that rate base was actually understated, because the recorded average plant in 1994 was $212,581 higher than the test year average plant. (Exh. 82A, p. 26.) This is corroborated by Jacqueline Forrester's testimony at the May 20, 2000, EH. (Exh. 83.) In the general rate case, we adopted a reduced rate of return for Hillview because of its unauthorized borrowing activities. As a consequence of the current investigation, which was largely the result of the confusion in Hillview's accounting records, Hillview did not have a general rate case between 1993 and 2000. Hillview's average plant increased significantly over that period, and contributions generally decreased. (Exh. 126.) Hillview argues that it has lost part of the return on its actual rate base because of this, and that its loss has more than offset the consequences of its accounting error, producing unrealistically low rates. By these arguments, Hillview is now merely trying to retroactively justify its failure to correct its own errors. Hillview was never prohibited from coming for a general rate case between years 1993 and 2000. It, on its own, decided not to do so.

income earned and other deposits, (e) other withdrawals and disbursements, and (f) final disposition of the ending account balances;

2. A full accounting of its loan transactions with third party lenders and shareholders including: (a) date of loan origination, (b) purpose of the loan, (c) original loan amount, (d) loan proceeds deposited into the utility's bank account, (e) disbursements of loan proceeds, (f) repayment of loan principal, (g) loan refinancing, and (h) disposition of any outstanding loan balance;
3. A full accounting of its contributions-in-aid-of construction and advances in aid of construction including: (a) the date of contribution / advance, (b) purpose of contribution / advance, (c) amount of contribution / advance, (d) date and amount deposited into the utility's bank account, (e) refund to contributor / payer, (f) amount of utility plant construction, improvement and / or repairs, (g) date and accounting entry employed to record such plant activities; and
4. A full accounting of its utility plant in service and construction work in progress including (a) additions and betterments, (b) retirements, (c) costs of removal and salvage values.

For all of these accounts, Hillview shall identify and include supporting documentation , which substantiates its source of funds for construction and the application of sales, and salvage proceeds resulting from plant retirements and sales. The purpose of the general rate case will be to closely examine all of Hillview's accounts and to resolve all issues that arise from the reconciliation of these accounts, including modifying Hillview's revenue requirement and adjusting its rates.

Given that the reconciliation is necessitated by Hillview's own failure to maintain an accurate and reliable record of its accounts, we do not believe ratepayers should bear the financial burden for all of the expenses associated with the reconciliation process, but rather, those expenses should be borne by Hillview's shareholders. Accordingly, we order that all expenses resulting from the account reconciliation are the responsibility of Hillview's shareholders and the company shall not be able to recover those expenses from its ratepayers.

7. Did the Respondents Obtain a Personal Loan of $350,000 from a Developer, Then Ask the Commission for Authority to Repay it Without Acknowledging that the Loan Was Used, or Intended to be Used, for a Personal or Non-Utility Purpose?

The loan transactions at issue are explained earlier in this decision. Staff's argument is based upon Chapter 8 of its audit report (Exh. 68), which characterizes this succession of loans as a "scheme of layers upon layers of loans…apparently designed to hide the true origin of the [CoBank] loan" for which Hillview sought our approval. (*Id.*, p. 40.) In light of the facts of record set forth above, we find that Staff has misinterpreted the evidence. Staff's rendition of the loan history is as follows:

1. In 1991 Forrester obtained a personal loan of $350,000 from 41 / 49 in exchange for a letter declaring that 41 / 49 had provided all the required utility plant.
2. In 1992 Hillview "falsely" recorded the $350,000 as a company loan on its books.
3. In 1993 Hillview obtained the $424,000 SBA loan to pay off the $350,000 personal loan, which was now inaccurately recorded on its books, "apparently in order to mislead the Golden Oak Bank and the Commission."

4. In 1994 Hillview came to the Commission for approval of the loan for $540,000 to use to pay off the SBA loan.

Staff characterizes this "compounding" of loans as an attempt to disguise the origin of the loan. (*Id.*, p. 41.)

Staff's rendition is based upon speculation, and the weight of the evidence indicates that its logic is flawed. First, irrespective of the reason why 41 / 49 requested, and the respondents furnished, the letter to Madera County as part of the personal loan transaction (which is nowhere explained in the record), the statement in the letter was correct: 41 / 49 had satisfied its obligation to contribute all of the utility plant under its main extension agreement with Hillview. Second, the personal loan was not recorded as a company loan at all; *see* the explanation in the preceding section. Third, Staff has offered no evidence to support its allegation that there was an effort to mislead us or the Golden Oak Bank, and our 1993 general rate case indicates just the opposite.

There is no substantial evidence in the record to convince us that the respondents "schemed" to conceal the personal loan to the Forresters, the proceeds of which were used principally to pay off Hillview's indebtedness. That debt reflected loans extended to the company by the Forresters, and by Linton apparently before he conveyed ownership to Forrester and Forrester's sister. Only the disposition of the remaining $141,546.97 is of any concern to us, and both Forrester and Peasley testified that Forrester reimbursed that sum to Hillview in 1998 in satisfaction of the loan he and Judith had received from Hillview. We infer from this succession of events and the absence of a cash transaction of this amount that Forrester and his ex-wife Judith simply retained the $141,546.97 loaned to them by 41 / 49, and gave the company a note in that amount to document that portion of the loan to the company; the company

recorded the entire transaction as a $350,000 loan from the Forresters, and canceled the outstanding indebtedness to them in partial satisfaction thereof.

This leaves unaccounted for only the four withdrawals from the SDWBA surcharge account made by Judith Forrester, totaling $15,541.16. Forrester became defensive when questioned at the evidentiary hearings about these withdrawals, and we infer that his marital difficulties with Judith were very likely involved. These funds (which are not included in the succession of loans recounted above), were withdrawn as payments to the Forresters in satisfaction of their loan to Hillview. It appears that this was improper, and there is no record that they were ever repaid to the SDWBA account.[20] If this is true, these funds must be reimbursed to the account with interest at the rate applicable to the SDWBA account at the time the withdrawals were made.

FINES/PENALTIES:

The Water Division recommends that we impose fines or penalties on Hillview for its egregious conduct. The Water Division states that the statute of limitations does not bar the Commission from imposing fines or penalties for violations of Commission orders.

The respondents assert that, under the California Code of Civil Procedure Section 340, claims for violations of a statute for a forfeiture or penalty

[20] If the Forresters (or either of them) retained the initial $141,546.97 and the $15,541.16 as well, it appears that the latter sum should have been recorded as a loan to Forrester and Judith, and repaid with interest to the SDWBA surcharge account. If this reimbursement has not been made, the company's customers will apparently have funded these cash payments to the Forresters through withdrawals from the company's SDWBA surcharge account.

to the people of California must be brought within one year. They assert that no fines or penalties can be imposed for the collection of any unauthorized fees or use of unauthorized main extension contracts prior to July 16, 1996. Because none of the violations underlying the OII are alleged to have occurred within the period one year prior to the OII, respondents assert that all claims for fines and penalties for such actions are barred by the statute of limitations.

We disagree with the respondents and conclude that this proceeding is not subject to CCP Section 340. The Commission has previously held that, while the one-year statute of limitations in CCP Section 340 applies to civil actions, it does not apply to administrative actions such as Commission proceedings. *(*See *Investigation into NOS COMMUNICATIONS, INC. (U-5251-C), dba International Plus, 011 Communications, Internet Business Association (INETBA), I-Vantage Network Solutions; AFFINITY NETWORK, INC. (U-5299-C), dba QuantumLink Communications and Horizon One Communications; and the corporate officers of NOS and ANI, D. 03-04-053, 2003 Cal. PUC LEXIS 272, p. 12.)* California courts have also held that statue of limitations codified in CCP 340 do not apply to administrative actions. *(*See *Investigation into the Commission's Own Motion into Whether The Bidwell Water Company misused its Safe Drinking Water Bond Act Surcharge Revenues and Has violated rules, orders, and decisions of the Commission, D.99-04-028, (1999), 85 CPUC 2d. 667 citing Robert F. Kennedy Medical Center v. Department of Health Services (1998) 61 Cal. App. 4th 1357, 1361-1362; Little Company of Mary Hospital v. Belshe (1997) 53 Cal. App. 4th 325, 329.*

Rather, this Commission is an administrative agency which has been granted broad powers by both the California Constitution and the Public Utilities Code. Included in those powers is our ability to take action, whether it be to levy sanctions or impose fines, against a utility which has violated our orders to ensure that such violations end and to deter those violations from occurring in

the future. If we are unable to penalize utilities for violating our rules and orders, utilities will have little or no incentive to comply with them.

TheCommission's authority to impose fines and penalties is found, in particular, in Sections 701, 2107 and 2108, as well as in other statutes (*See* Public Utilities Code §§ 2110 and 2113.) Under Section 701, the Commission has broad authority to levy appropriate fines in the course of its business. Section 701 provides that " The [C]omission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." Sections 2107 and 2108 provide the Commission with additional authority, with specific dollar amounts, for imposing fines. Section 2107 states that "any public utility which . . .fails to comply with any part of provisions of any order, decision, decree, rule, direction, demand, or requirement of the [C]ommission, in a case in which a penalty has not been otherwise provided, is subject to a penalty of not less than five hundred dollars, nor more than twenty thousand dollars for each offense. Section 2108 further provides that, where the violations are ongoing, each day they continue is a separate and distinct offense.

The specific guidelines for setting fines are found in the Commission's Merger Rulemaking decision, I.98-04-009, D.98-12-075. In establishing the appropriate fine, the Commission has taken the following factors into consideration:(1) the severity of the offense; (2) the conduct of the utility; (3) the financial resources of the utility; and (4) the totality of circumstances related to the violation. In this decision, the Commission noted thatthe purpose of a fine is to effectively deter further violations by the perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims.

In this case, we conclude that the respondents' failure to comply with various Commission rules and statutes have substantially harmed its customers and as a consequence, we believe a fine is warranted. Section 2107 allows us to impose anywhere from $500 to $20,000 against the company for each violation committed. Under section 2108, such fine can be imposed for each day of continuing violations. According to the evidentiary record in this proceeding, Hillview unlawfully collected the supply and storage fees from many (over 100) customers.[21] Furthermore, none of those customers have been provided with a refund to date. If we apply Sections 2107 and 2108 and calculate the fine based on each violation committed, the fine would result in million of dollars against the company. Because an imposition of such a heavy fine would jeopardize and destroy the financial health of the company, we will not calculate the fine based on each violation committed. Instead, we impose a fine of $1000 on the company and require the company to submit the payment to the Commission within 60 days from the effective date of this decision based on the facts of this case. Although Hillview does not have good reasons to justify its failure to comply the terms of its tariffs, we recognize that it is a relatively small water company with only approximately 1,370 customers. We also recognize that the supply and storagefees it unlawfully collected for main extensions and special facilities were recorded in its CIAC account and that the funds in that account were used for the construction of facilities in districts with which they were associated. We also note that the supply the storage fees Hillview collected were not included in its ratebase and the company has not earned a return on these funds. In this OII,

[21] The record shows that Hillview included the supply and storage fees in its main extension contracts. Such contracts were executed with over 100 customers.

our core objectives are to deter the company from committing these violations again in the future and to ensure that the customers of the company are receiving safe and reliable water service that meets the Commission's requirements. Rather than a fine based on each violation committed, we believe fine in the amount of $1000 is sufficient to achieve these objectives.

Conclusion

There is substantial evidence in the record demonstrating that the respondents engaged in conduct that, was contrary to various Commission-approved tariffs and statutes this Commission enforces. Instances of this conduct are specifically enumerated in the Findings of Fact and Conclusions of Law. The facts in this proceeding indicate that the company's conduct, particularly during the period from 1991 through 1994, was reprehensible in many respects and caused substantial harm to its customers.

In order to make Hillview customers whole, we will adopt the Water Division's recommendation and order refunds to the customers as required by Hillview's tariff. We will order Hillview customers to submit a written refund claim, with evidence of payment, to the company within six months form the effective date of the decision. The company shall then process the refund claims within 60 days from the receipt of the claims. The company shall provide to each customer 2 ½ percent of the total amount of the supply and storage fee it collected on an annual basis until the total amount is paid off. It there is a dispute between the company and the customer regarding the refund claim, the customer may file a complaint with the Commission and we will resolve the complaints on a case-by-case basis. To ensure that all affected customers are

properly notified of their right to seek refunds, we will require Hillview to notify its customers regarding the refunds in a local newspaper as set forth in the OP 7.

We also impose a fine of $1000 on the company for its numerous violations of the Commission's statutes and orders. Although Section 2107 permits us to impose a fine on each violation committed, we will not do so here so that the company remains financially viable and continue to provide safe and reliable water service to its customers. We believe that a fine of $1000 along with the requirement to make refunds, is sufficient to deter Hillview from violating the Commission's statutes and orders in the future.

Lastly, we require the company to reconcile all of its accounts and provide that information to the Commission in a general rate case application, which shall be filed within ninth months from the effective date of the decision. Our major concern here is to ensure that the company provides a full and accurate accounting to reflect our findings, and to make a rate adjustment pursuant to OP 5 of the OII. OP 5 states that a separate phase of this proceeding may be used, if violation are found, for the purpose of determining what the utility's revenue requirement should be, and to set rates accordingly, and to ensure that any wrongful charges assessed to consumers are refunded. Because this proceeding is so old, we will not institute a separate phase in this proceeding. Instead, we will close this proceeding and open a new general rate case proceeding to examine Hillview's account reconciliation report and to determine what its revenue requirement and rates should be on a going forward basis. We will also address all other issues that arise from the account reconciliation report. In that proceeding, we will also review the company's report on the refunds and address all issues that arise from that report as well.

Comments on the Proposed Decision

The proposed decision of the ALJ was mailed to the parties in accordance with Public Utilities Code Section 311(d) and opportunity for comment was provided pursuant to Rules 77.2-77.5 of the Rules of Practice and Procedure. Comments were received on _____.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Findings of Fact

1. The $25,000 withdrawal from Hillview's SDWBA account on January 31, 1992, was not approved by the Commission. It was, however, approved by the Department of Water Resources, and was used for utility purposes.

2. The four withdrawals from Hillview's SDWBA account on June 30, July 31, September 30, and October 30, 1993, were paid to Forrester and his ex-wife Judith, and were not approved by the Commission.

3. The respondents did not seek prior Commission approval of the $424,000 SBA loan to Hillview in 1994. Res. No. W-3833 (March 9, 1994) reflects that the Commission was by then aware of this unauthorized borrowing.

4. By July 31, 1998, Forrester paid all of the $141,546.97 owed to Hillview as partial repayment of the $350,000 the company had loaned to him and his ex-wife, Judith.

5. Hillview sought prior approval of the two CoBank loans by a draft AL filed on October 6, 1993. Res. No. F-632, issued in response to the request on November 22, 1994, reflects that the Commission was aware Hillview was in

violation of Section 825 for failure to secure prior approval of Hillview's commercial debt.

6. Hillview modified certain Commission-approved service connection applications and main extension contract forms used to implement Tariff Rule 15, by inserting provisions requiring the customer to pay a nonrefundable "Supply and Storage Fee." The term, "Supply and Storage Fee" does not appear in Tariff Rule 15 or any other Commission-approved tariff that pertains to this investigation.

7. From 1982 until at least 1993, utilities were only permitted to collect fees to pay for supply and storage facilities from developers, and not from individuals, under the terms of Commission-approved tariffs.

8. Hillview collected "Supply and Storage Fees" from individual customers until 1994.

9. Hillview's failure to refund these fees as advances pursuant to the refund schedule in Paragraph C.2.c of Tariff Rule 15 was contrary to the express requirements of that tariff.

10. Hillview did not properly make the election to treat payments for customers as non-refundable contributions under applicable tariff rules.

11. Hillview's practice of collecting "Supply and Service Fees" until June 1994 was not provided for in Tariff Rule 15.

12. Hillview's alteration and use of Commission-approved forms used to implement Tariff Rule 15 without obtaining prior Commission authority was contrary to Paragraph A.1.a of that tariff.

13. Hillview's noncompliance with Commission-approved tariffs as described herein substantially harmed its customers ,

14. In response to two data requests, Hillview furnished to Staff photocopies of completed application forms that had been altered by replacement of the bottoms of the original documents. The principal instance was a data request for a list of customer names. Production of the names in this fashion was responsive to the request, and any obliterated information was readily available to Staff.

15. There is no substantial evidence that the respondents altered any documents in an effort to mislead the Commission.

16. Hillview did not enter into main extension contracts with Longs Drugs or Vons Markets in compliance with Tariff Rule 15 when those customers arranged for service to the properties involved in this investigation.

17. There is no substantial evidence in the record that respondents diverted revenue collected expressly to repay its SDWBA loans from the special surcharge account and applied them to other purposes, including personal business use by Forrester, *except* for the withdrawals referred to in Finding of Fact 2, above, which were purportedly payments to Forrester and his ex-wife Judith in partial satisfaction of a debt owed to them by Hillview.

18. There is no substantial evidence in the record that Hillview submitted AL 53 for additional authority to expand facilities and increase indebtedness, and in it misstated the level of the special fund account due to diversion in a manner prohibited by Commission rules and orders.

19. The Forresters' assumption of a $47,900 loan to the company by Linton and cancellation of that debt as part of the 1992 loan transaction was based upon a substantiated pre-existing obligation to Linton for sums he had advanced on behalf of the company and cash he had paid to the company.

20. In the 1992 transaction, Forrester did not immediately loan $141,546.97 to the company, as reflected in the terms recorded for that loan transaction.

21. The book entry made in 1992 that included the $350,000 obligation was not properly recorded. That transaction should have been recorded as set forth in Exh. 124 under proper accounting procedure.

22. As a result of improper recording of the 1992 transaction, Hillview's CIAC was understated, and its rate base was overstated, by $141,546.97 for the 1994 test year.

23. In the 1993 General Rate Case, we adopted a low rate of return for Hillview because of its previous unauthorized borrowing activities.

24. At the time 41 / 49 made the $350,000 loan to the Forresters, it had already fully satisfied its obligation to contribute utility plant under its main extension contract with Hillview.

25. The $350,000 personal loan to the Forresters was not recorded as a loan to the company.

26. There is no evidence that Hillview obtained the $424,000 SBA loan in order to mislead Golden Oak Bank or the Commission.

Conclusions of Law

1. Based upon the foregoing findings, the respondents violated Section 491 prior to July 31, 1994, by conduct contrary to various provisions of Commission-approved tariffs.

2. Based on the foregoing findings, the respondents did not violate Section 571 as alleged in the OII.

3. Based upon the foregoing findings, the respondents violated Section 825 by incurring indebtedness on behalf of Hillview without first obtaining an order of the Commission granting authority to do so.

4. Based upon the foregoing findings, the respondents violated Commission Rule of Practice and Procedure 1, as alleged in the OII.

5. Based upon the foregoing findings, the respondents violated Tariff Rule 15

6. Based upon the foregoing findings, the respondents should be ordered to make refund of the unauthorized supply and storage fees collected back to individual customers in accordance with the terms of Tariff Rule 15. The customers shall have six months within which to submit a written claim to the company for a refund.

7. Based upon the foregoing findings, the respondents shall be ordered to publish a notice regarding the refunds in the most widely circulated newspaper in Hillview's service territory within 30 days from the effective date of this decision. The respondents shall publish the same notice again three months after the publication of the first notice.

8. Based upon the foregoing findings, the respondents shall be ordered to pay a fine of $1000 and the fine shall be payable to the Commission within 60 days from the effective date of this decision.

9. Based upon the foregoing findings, a final reconciliation of Hillview's accounts should be prepared to explain and correct any discrepancies or irregularities identified in the findings, for the period from January 1, 1991, through June 30, 2003. The final reconciliation shall be included in a general rate case application, which shall be filed within nine months from the effective date of this decision.

10. Based upon the foregoing findings, Hillview shall prepare a comprehensive report on the refunds in its general rate case application.

FINAL ORDER

IT IS ORDERED that:

1. Within nine months of the effective date of this order, the respondents Hillview Water Company, Inc. (Hillview) and Roger L. Forrester (Forrester), the principal shareholder and president, shall prepare and file with the Commission a general rate application which includes a final reconciliation of Hillview's accounts for the period from January 1, 1991, to and including July 30, 2003 that fully explains all of the discrepancies and irregularities identified in the Findings of Fact. This reconciliation shall include, but shall not be limited to, to the accounts set forth in Section 6 of this decision.

2. Within 30 days from the effective date of this order, the respondents shall publish a notice regarding the refunds in the most widely circulated local newspaper for duration of one-week. The respondents shall run this notice again three months after the publication of the first notice in the same newspaper and for the same duration of time. The refund notice shall be submitted for a review and approved by the Water Division prior to the publication of the first notice.

3. Within six months from the effective date of this decision, customers shall submit a written claim for refund to the company. The written claim shall include a proof of evidence, either a receipt or any other document that, demonstrates the payment of the supply and storage fees.

4. Within 60 days from the receipt of a written refund claim, Hillview shall do one of the following: (a) provide the refund; (b) request for more information regarding proof of payment; (c) deny the claim with an explanation. Any dispute regarding the refund that cannot be resolved between the customer and the company may be brought the Commission. Hillview shall provide to each customer, 2 ½ percent of the total amount of the supply and storage fee annually,

until the total amount is paid off in accordance with the terms of Section C.2. of Tariff Rule 15.

5. Within 60 days of the effective date of this order, the respondents, Hillview Water Company, Inc. (Hillview) and Roger L. Forrester (Forrester), the principal shareholder and president, shall pay the $1000 fine to the Commission.

6. Investigation 97-07-018 will be closed upon the respondents' filing of a general rate case application. All compliance issues, including all the reconciliation of accounts and the refund report, shall be matters to be addressed in the general rate case.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Proposed Decision of Commissioner Brown on all parties of record in this proceeding or their attorneys of record.

Dated September 4, 2003, at San Francisco, California.

/s/ VANA WHITE
Vana White

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.